

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CIV. NO. S-06-2728 EJG  
CR. NO. S-02-0246 EJG

OCTAVIO HERNANDEZ SUAREZ,

ORDER DENYING REQUEST FOR  
CERTIFICATE OF APPEALABILITY

Defendant.

---

Defendant, a federal prisoner proceeding pro se, has filed a Notice of Appeal from this court's March 20, 2008 order denying his § 2255 motion to vacate, set aside or correct his sentence. He has also filed a request for a certificate of appealability, which certificate must be issued before defendant can appeal the decision. See Fed. R. App. P. 22(b). Such certification may issue "only if [defendant] has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The court must either issue a certificate of appealability indicating which issues satisfy the required showing or must state the reasons why such a certificate should not issue. Fed. R. App. P. 22(b)(1).

1 For all of the reasons stated in the court's March 20, 2008  
2 order, defendant has not made a substantial showing of the denial  
3 of a constitutional right. Although two of his claims arise  
4 under the specter of the constitution, defendant has not  
5 demonstrated that "reasonable jurists would find the District  
6 Court's assessment of the constitutional claims debatable or  
7 wrong." Slack v. McDaniel, a529 U.S. 473, 484 (2000). Rather,  
8 he merely reargues his motion to vacate, set aside or correct his  
9 sentence, disagreeing with the evidence proffered against him,  
10 but failing to present any of his own. Accordingly, the motion  
11 for a certificate of appealability is DENIED.

12 IT IS SO ORDERED.

13 || Dated: May 21, 2008

/s/ Edward J. Garcia  
EDWARD J. GARCIA, JUDGE  
UNITED STATES DISTRICT COURT